HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:28023 OF 2007

Dated:28.12.2007

Between:

M/s. Ganesh Constructions, rep.,
By its Managing Partner D. Narsing
Rao, S/o D. Balaji.

..Petitioner

And

1. The Commercial Tax Officer,
   Madhapur Circle, Hyderabad and another.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
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WRIT PETITION No:28023 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the attachment notice issued by the 1st respondent dated 11.12.2007 for collection of the disputed taxes for the assessment year 2003-2004 and 2004-2005, pending disposal of the appeal and stay application before the 2nd respondent, as illegal and arbitrary and consequently, to direct the 1st respondent not to collect the disputed tax pending disposal of the appeal before the 2nd respondent.

The main grievance of the petitioner is that aggrieved by the assessment order, an appeal has been preferred before the 2nd respondent. Along with the appeal, an application for stay of collection of the disputed tax has also been moved before the 2nd respondent and the same is pending consideration. While so, the 1st respondent has issued the impugned notice. Having aggrieved by the same, the present writ petition has been filed by the petitioner.

Heard the learned Counsel appearing for the petitioner and the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that the appeal and the stay application are pending as to the assessment before the 2nd respondent and at this stage, the issuance of the notice impugned is unjustified and in these circumstances, if the relief of stay is not entertained and if the disputed tax is recovered, the very purpose of filing the appeal before the 2nd respondent would be defeated.

In the facts and circumstances of the case and in view of the fact that the appeal is pending before the 2nd respondent, without

expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted.

Accordingly, there shall be stay of recovery of the disputed tax and attachment notice, pending disposal of the appeal before the 2nd respondent subject to the condition of the petitioner depositing 50% of the disputed tax of each assessment year, within a period of six weeks from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 28th December, 2007

Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI

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HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:28023 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

28/12/2007